



## **FACTUAL HISTORY**

On March 6, 2012 appellant, then a 59-year-old building equipment mechanic, filed a traumatic injury claim, Form CA-1, alleging that on that date he strained his low back while securing a motor in the performance of duty. He returned to light duty on March 15, 2012. OWCP accepted his claim for lumbar strain on April 25, 2012.

On July 25, 2012 appellant's attending physician, Dr. Rikin J. Patel, an osteopath and a Board-certified physiatrist, reported that appellant could work with no lifting over 10 pounds, no work requiring repetitive or prolonged kneeling, squatting, climbing or ladders, and no repetitive or prolonged bending or stooping. Appellant accepted a modified-duty assignment on August 2, 2012 building routes and building repairs for four hours which required sitting intermittently for two hours, walking intermittently for two hours, stooping intermittently for two hours, and climbing intermittently for two hours. On August 14, 2012 Dr. Patel noted that appellant reported that his level of work had increased with the frequent need to bend and twist which was aggravating his back pain. He found lumbar paraspinal muscle spasms and diagnosed chronic mechanical back pain with degenerative disease of the lumbar spine and chronic lumbar myofascial pain. Dr. Patel found that appellant could perform sedentary duty only.

On September 7, 2012 appellant accepted a limited-duty position sitting intermittently for four hours, walking intermittently for two hours and standing intermittently for two hours building routes and performing inventory of parts.

OWCP authorized a change of physicians and appellant sought treatment from Dr. Matthais H. Wiederholz, a Board-certified physiatrist, on October 15, 2012. Dr. Wiederholz diagnosed degeneration of lumbar intervertebral disc, lumbosacral spondylosis without myelopathy, radicular or neuropathic pain, strain of the back, and lumbago. On December 4, 2012 Dr. Wiederholz reviewed electrodiagnostic studies and found that appellant had right L5-S1 radiculopathy. He also examined a magnetic resonance imaging (MRI) scan which demonstrated degenerative changes at L3-4 and L4-5 with moderate spinal stenosis. Dr. Wiederholz completed a note dated December 13, 2012 and reported that appellant should not work to pursue treatment for his employment injuries. He noted that appellant could hopefully return to work by the end of January 2013.

Appellant filed claims for compensation (CA-7 forms) requesting leave without pay beginning December 15, 2012.

On December 20, 2012 Dr. Wiederholz performed an epidural steroid injection at L4-5. He examined appellant on January 7, 2013 and found that appellant's symptoms improved following the epidural steroid injection.

In a letter dated January 22, 2013, OWCP requested that appellant submit evidence establishing a change in the nature and extent of his injury-related condition or a change in the nature and extent of his light-duty job requirements.

Appellant filed a recurrence of disability claim (Form CA-2a) on January 23, 2013 alleging that he stopped work on December 13, 2012 due to his March 6, 2012 employment

injury. He stated that Dr. Wiederholz found he could no longer work on December 13, 2012. Appellant stated that he used sick leave from December 13 to 15, 2012 because he was ill due to a nonwork-related condition and that December 16, 2012 was the date his actual pay stopped.

In a note dated January 23, 2013, Dr. Wiederholz reported that appellant underwent an additional epidural steroid injection and continued with physical therapy. He recommended that appellant remain out of work until February 18, 2013. Dr. Wiederholz examined appellant on January 30, 2013 and found that his left side pain had improved, but that appellant was experiencing pain down his right leg. He recommended an additional injection, physical therapy, and chiropractic treatment.

In a letter dated January 22, 2013, OWCP requested additional medical evidence in support of appellant's claimed recurrence of total disability. It allowed 30 days for a response.

By decision dated February 25, 2013, OWCP denied appellant's claim for recurrence of total disability, finding that he failed to submit the necessary medical opinion evidence to establish that his total disability, beginning on December 13, 2012, was due to his accepted employment injury of lumbar strain. It explained that appellant's work stoppage was attributable to nonemployment-related conditions, including an upper respiratory condition.

Counsel requested an oral hearing from OWCP's Branch of Hearings and Review on March 7, 2013. In a note dated March 11, 2013, Dr. Wiederholz noted that appellant had recently returned to work and that his back pain symptoms had increased. He diagnosed degeneration of lumbar intervertebral disc, lumbar spondylosis without myelopathy, neuritis, radicular and neuropathic pain, strain of the back and lumbago. On April 15, 2013 Dr. Wiederholz noted that appellant continued to have back pain with occasional radiation down the right leg. He opined that appellant had reached maximum medical improvement with regard to his back strain.

Appellant testified at the oral hearing on June 24, 2013 regarding his treatment with Dr. Wiederholz. He stated that the employing establishment did not have enough sedentary work for him to do and that he was using leave to make up his hours. Appellant stated that he was harassed at work in December 2012 and was not allowed to sit. He alleged that he was sent home after only 15 to 30 minutes of work. Appellant stated, "Things were getting really crazy there and I was under a lot of stress and I also told Dr. Wiederholz about the stress and about all the nonsense and all that and I felt like I needed to be out of work completely." He stated that before December 13, 2012 he was using a combination of sick and annual leave as well as requesting compensation for leave without pay from OWCP. Appellant also testified that beginning December 13, 2012 he stopped work due to an upper respiratory condition that lasted about three days and that December 13, 2012 was not the commencement date of his recurrence of total disability as he was already using leave for this illness.

Following the oral hearing, the employing establishment submitted notes from Dr. Wiederholz releasing appellant to return to work at light-duty status on February 25, 2013. Dr. Wiederholz then released appellant to return to full duty on February 26, 2013. In a report dated July 18, 2013, he noted that appellant had a flare-up of back pain after a return to full duty.

On July 29, 2013 Dr. Wiederholz found that appellant had to stop work requiring further treatment.

By decision dated August 15, 2013, an OWCP hearing representative affirmed the February 25, 2013 decision, finding that appellant had not submitted sufficient medical evidence to establish a recurrence of disability causally related to the accepted March 6, 2012 injury.

In a report dated March 24, 2014, Dr. Wiederholz described appellant's March 6, 2012 employment injury and listed appellant's diagnoses including lumbar facet syndrome, sacroiliitis, degeneration of lumbar intervertebral disc, lumbosacral spondylosis without myelopathy, neuritis, radicular and neuropathic pain, strain of the back, lumbago, and light-headedness. He performed lumbar medial branch blocks on April 16, 2014 which he found had resulted in temporary relief of appellant's pain in a report dated April 23, 2014. Dr. Wiederholz performed an additional lumbar medial branch block on June 4, 2014. On June 16, 2014 he noted that appellant's back pain returned to baseline following the June 4, 2014 injection.

Counsel requested reconsideration on August 14, 2014 and submitted additional medical evidence. In a report dated July 25, 2014, Dr. Wiederholz described appellant's employment injury and noted that appellant felt something pop in his back while installing a motor. He noted that Dr. Patel diagnosed lumbar strain. Dr. Wiederholz noted that appellant underwent a lumbar MRI scan on April 20, 2012 which demonstrated moderate broad-based disc bulges and facet hypertrophy with mild-to-moderate bilateral foraminal stenosis at L3-4 and L4-5 with moderate central canal stenosis at L4-5. He diagnosed displacement of the lumbar intervertebral disc, lumbar radiculopathy, degeneration of lumbar intervertebral disc and lumbar spondylosis without myelopathy. Dr. Wiederholz opined that the work injury directly caused appellant's back pain. He reported that electrodiagnostic testing confirmed right L5-S1 radiculopathy, and opined that this condition should have been accepted as employment related. Dr. Wiederholz stated that, as appellant had 60 percent improvement in his pain with the December 20, 2012 L4-5 epidural steroid injection, this indicated that the disc bulge was the source of appellant's pain. He opined that appellant's March 6, 2012 employment injury resulted in two level disc herniations and radiculopathy rather than a lumbar strain. Dr. Wiederholz based his opinion on the electrodiagnostic testing and the lumbar MRI scan. He alleged that appellant sustained an aggravation of his condition on July 18, 2013.<sup>2</sup>

By decision dated November 5, 2014, OWCP denied modification of its August 15, 2013 decision finding that appellant had not submitted the necessary medical opinion evidence to establish a recurrence of disability causally related to his accepted employment injury of lumbar strain.

### **LEGAL PRECEDENT**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-

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<sup>2</sup> Appellant filed a separate traumatic injury claim for an injury on July 18, 2013.

duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>3</sup>

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>4</sup> Furthermore, appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between his recurrence of disability and his March 6, 2012 employment injury.<sup>5</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>6</sup> Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.

The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>7</sup> Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>8</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she felt too much pain to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>9</sup> The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so

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<sup>3</sup> 20 C.F.R. § 10.5(x).

<sup>4</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>5</sup> *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>6</sup> *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>7</sup> 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

<sup>8</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>9</sup> *Id.*

would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of total disability on December 15, 2012<sup>11</sup> due to his accepted March 6, 2012 employment injury of lumbar strain. The record establishes that appellant returned to a sedentary-duty position within the restrictions provided by Dr. Patel on September 7, 2012. Appellant continued to work in this position until December 15, 2012 when he stopped work as directed by Dr. Wiederholz, alleging a recurrence of disability due to his accepted March 6, 2012 work-related back strain. Appellant has alleged a change in the nature and extent of his injury-related condition rather than a change in his light-duty job requirements in his attempt to establish a recurrence of total disability after returning to light-duty work.

Dr. Wiederholz, first examined appellant on October 15, 2012, noted his history of injury and diagnosed degeneration of lumbar intervertebral disc, lumbosacral spondylosis without myelopathy, radicular or neuropathic pain, strain of back and lumbago. He reviewed electrodiagnostic studies and found that appellant had right L5-S1 radiculopathy. In a note dated December 13, 2012, Dr. Wiederholz stated that appellant should not work to pursue treatment for his employment injuries. This note is not sufficiently detailed and well-reasoned to establish appellant's claim for a recurrence of disability due to a change in the nature and extent of his injury-related condition. Dr. Wiederholz merely indicated that appellant required medical treatment for his back conditions. Without any explanation of why appellant could no longer perform the sedentary position outlined by Dr. Patel and held since September 2012, this report is not sufficient to meet appellant's burden of proof.

The Board also notes that at the oral hearing appellant testified that Dr. Wiederholz removed him from duty as appellant felt that he needed to be out of work. As noted above, employees are not allowed to self-certify their disability and entitlement to compensation. Furthermore, without findings shown on examination to support his opinion that appellant was disabled from work, Dr. Wiederholz has not presented a medical opinion on the issue of disability and cannot establish appellant's claim for a recurrence of disability due to a change in the nature and extent of his accepted injury-related condition.

In his July 25, 2014 report, Dr. Wiederholz stated that appellant's claim should be expanded to include the additional conditions of herniated disc and lumbar radiculopathy. He described appellant's employment injury and noted that Dr. Patel diagnosed lumbar strain. Dr. Wiederholz opined that the lumbar MRI scan on April 20, 2012 demonstrated bulging discs at L3-4 and L4-5 which were due to appellant's lifting incident. He stated that electrodiagnostic testing confirmed right L5-S1 radiculopathy, and opined that this condition should have been

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<sup>10</sup> *Id.*

<sup>11</sup> As noted above, appellant testified at the oral hearing that he stopped work on December 13, 2012 due to an upper respiratory condition for which he used sick leave. He clarified that he did not claim compensation due to his March 6, 2012 employment injury until December 15, 2012 after Dr. Wiederholz directed him to do so.

accepted as employment related. Dr. Wiederholz opined that appellant's March 6, 2012 employment incident resulted in two level disc herniations and radiculopathy rather than a lumbar strain. While his report is based on a proper factual background and includes a review of the medical testing upon which he based his opinion, he did not offer sufficient medical reasoning to establish that additional back injuries resulted from appellant's accepted employment incident. Dr. Wiederholz did not explain how the lifting incident resulted in the diagnosed conditions. Instead he merely opined that this incident was sufficient to cause appellant's back pain.

The Board finds that the medical evidence is not sufficiently detailed and well-reasoned to establish that appellant sustained a change in the nature and extent of his injury-related back condition on December 15, 2012 resulting in a period of total disability.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § § 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained a recurrence of total disability on December 15, 2012 due to his accepted employment-related back injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** November 5, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board